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ON THE LAW OF THE SEA

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ORIGINAL: ENGLISH

Tenth session

FIRST COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE 51st MEETING

Held at Headquarters, New York,
on Friday, 20 March 1981, at 10.30 a.m.

Chairman: Mr. ENGO (United Republic of Cameroon)

CONTENTS

Preparatory Commission (continued)

Corrections to this record should be submitted in one of the languages of the Conference. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room A-3550, 866 United Nations Plaza.

The meeting was called to order at 10.55 a.m.

PREPARATORY COMMISSION (continued) (A/CONF.62/L.55 and Corr.1)

Mr. WUENSCHE (German Democratic Republic) said that his delegation agreed that a Preparatory Commission should be established by means of a resolution adopted by the Conference at the time of the signing of the Final Act; it could, in principle, support the draft resolution contained in document A/CONF.62/L.55, annex II. The provisions of paragraph 2 on the composition of the Commission were acceptable. It should be stated clearly in paragraph 3 that the Commission should, in principle, function on the basis of the rules of procedures of the Conference, including the Gentleman's Agreement on taking decisions. It should be able to establish subsidiary committees, but that matter required more detailed consideration.

The function of the Preparatory Commission should be to ensure that the organs of the Authority could begin work immediately after the entry into force of the Convention. His delegation could also agree to the provision for the Commission to arrange for convening the Law of the Sea Tribunal. Paragraph 4, which listed other tasks of the Commission, was acceptable. His delegation reserved the right to comment at a later stage on whether it should, apart from the functions traditionally assigned to preparatory commissions, also deal with other specific matters, such as those mentioned in paragraphs 5 and 8.

In any event, the arrangements for the Preparatory Commission should be such as to ensure maximum efficiency at minimum cost. Full advantage should be taken of the experience acquired by the secretariat of the Conference, paragraph 10 of the draft resolution should specifically provide for the Commission to meet at one of the United Nations headquarters cities so as to make full use of available facilities. There was a need to harmonize paragraphs 10 and 13.

(Mr. Wuensche, German Democratic Republic)

His delegation shared the view that negotiations on unresolved matters should be carried out in an appropriate negotiating forum, which should produce a draft resolution on the Preparatory Commission acceptable to all parties.

Mr. PINTO (Sri Lanka) said that the signing of a convention at Caracas in 1981 remained the goal of the overwhelming majority of delegations. His delegation endorsed the view of the Group of 77 that the Preparatory Commission should be established by a resolution of the Conference, although the idea of setting it up by means of transitional provisions incorporated in the Convention itself would also be acceptable. Membership of the Preparatory Commission should be limited to States which had at least signed the Convention, and it should be established as soon as the Convention had been signed by a specified number of States. Such a requirement would be helpful, having regard to the obligations of the Commission under paragraph 12 of the draft resolution contained in document A/CONF.62/L.55, annex II. It was difficult, however, to reconcile paragraphs 1, 2 and 14 of the draft resolution with paragraph 10; his delegation was uncertain whether the intention was that the Commission would actually be in existence before the requirements laid down in paragraph 10 were met.

The establishment of a Preparatory Commission was essential to the orderly establishment of an organization so complex as the Authority. Its functions should go beyond those traditionally assigned to preparatory commissions, and his delegation agreed with the basic approach reflected in the draft resolution, which envisaged a wide range of preparatory activities. It was difficult to understand why no reference was made to the establishment of the Enterprise in the draft resolution. Making the arrangements for the establishment of the Enterprise should be included among the functions of the Commission and might well prove to be one of its most complex tasks.

His delegation agreed that the Commission should prepare the draft rules, regulations and procedures contemplated by the Convention, including those associated with article 16 of annex III of the Convention. It was his delegation's understanding that it was for that purpose that the Commission would be empowered under paragraph 6 to establish subsidiary committees. In relation to article 16

(Mr. Pinto, Sri Lanka)

of annex III, the establishment of a kind of legal and technical commission might be envisaged. As the draft resolution did not envisage the establishment of any executive organ, it seemed that the Commission was intended to carry out its functions through committees of the whole.

The preparation by the Commission of draft operational rules and regulations, which his delegation supported, was completely separate from the issue of whether or not those rules should be given interim application as, for example, under any scheme for the authorization of pioneer mining ventures. On that issue, his delegation awaited the initiatives of those primarily concerned with the need to strengthen the confidence of entities which might wish to invest early in sea-bed mining under the Convention. As the Conference was to complete its work programme within the coming six months, the earlier specific proposals on the matter were placed before the Conference the better.

Mr. RUDKOWSKI (Poland) said that annex II of document A/CONF.62/L.55 provided a sound basis for the Committee's consideration of the Preparatory Commission. The resolution on transitional measures to be adopted by the Conference should not create any artificial obstacles to the effective functioning of the Preparatory Commission. Accordingly, only essential matters should be dealt with in it. There were many precedents in the work of similar preparatory organs which could be drawn on.

His delegation favoured making signature of the Final Act of the Conference the criterion for membership of the Commission, since that would ensure the broadest possible participation. If it had been deemed desirable for the countries to participate in the preparation of the Convention, there were even stronger grounds for their participation in the work of the Preparatory Commission.

The Commission should proceed on the basis of consensus, and its role should be limited to making recommendations. Given the temporary and auxiliary character of the Commission, it should not have powers that might in any way prejudge the decisions of the Authority.

The draft resclution contained in document A/CONF.62/L.55, annex II, contained very few provisions which required further clarification or amendment. His delegation could **therefore** support its adoption with minor drafting changes.

Mr. KUMAGAI (Japan) said that the late President's proposals in document A/CONF.62/L.55 regarding the Preparatory Commission provided a good basis for discussion. The draft resolution contained in that document could be elaborated to take account of a number of specific ideas. That could make the proposed arrangements acceptable to all delegations.

The Preparatory Commission should be established by means of a resolution of the Conference; that would be the best way to ensure an early start to its activities. For the same reason, membership in the Commission might be made open to signatories of either the Final Act or the Convention. The structure of the Commission should be similar to that envisaged for the Authority in the draft convention. Its decisions should be taken, in principle, on the basis of consensus. The rules, regulations and procedures drafted by the Commission should apply provisionally, pending their formal adoption by the Authority, as stipulated in article 308, paragraph 4, of the draft Convention.

As to the functions of the Commission, his delegation believed that its decisions should not have binding force and that it should not have power to impose financial burdens on participating States. Its functions should be limited to those normally essential to the preparations for a new international organization. A possible complication which might arise if the Commission's decisions had binding force would be that the Conference resolution setting up the Commission might have to be approved by national legislatures, and that could mean considerable delay in the establishment of the Commission itself.

The question of the Preparatory Commission was closely related to the question of preparatory investment protection, and the Conference would inevitably have to deal with that problem in due course.

Mr. OUDOVENKO (Ukrainian Soviet Socialist Republic) said that the draft resolution contained in annex II of document A/CONF.62/L.55 provided a sound basis for the Committee's consideration of the Preparatory Commission. At the ninth session the majority of delegations had supported the establishment of such a commission and a measure of agreement had been reached concerning its goals, tasks and functions.

(Mr. Oudovenko, Ukrainian SSR)

His delegation was in favour of establishing the Commission by means of a resolution of the Conference; a precedent for that arrangement was the establishment of the United Nations itself. His delegation also agreed with the position of the Group of 77 that the functions of the Commission must be in strict accordance with the provisions of the Convention and that its powers should be confined to making recommendations.

The Commission should deal primarily with the preparation of basic documents required for the first sessions of the Assembly and the Council. Its work should not duplicate or replace that of the Authority. Accordingly, his delegation found the provisions of paragraphs 1, 4 and 5 of the draft resolution to be wholly justified. The additional function of convening the Law of the Sea Tribunal should not be taken as grounds for broadening the competence of the Commission, since the existing provisions of the Tribunal's Statute already dealt in detail with the actual process of setting it up and selecting its members.

Paragraph 2 of the draft resolution was also acceptable. Membership in the Commission should be based on the clearly expressed desire of the State concerned to assume the rights and obligations provided for in the Convention. Otherwise, it would be difficult for the Commission to perform its primary task, which was the early establishment of the Authority and ensuring the broadest possible participation in the Convention.

The draft resolution did not, however, deal with one of the most important procedural matters relating to the Commission's work. Experience had shown the principle of consensus to be indispensable, and it should be stipulated in paragraph 3 that the Commission should take its decisions by consensus. That would ensure that the recommendations made by the Commission would constitute the basis for the decisions of the Authority with regard to its structure and principles and the procedures for exploring and exploiting the resources of the sea-bed.

His delegation had no objection to the discussion of outstanding issues or individual provisions of the draft resolution in meetings of informal groups with a limited membership such as the Working Group of 21.

Mr. UL-HAQUE (Pakistan) said that his delegation accepted the idea that the Preparatory Commission should be established by a resolution of the Conference. There seemed to be general agreement regarding the purposes and objectives of the Commission. He endorsed the position of the Group of 77 that only signatories of the Convention should be eligible for membership of the Commission and that signatories of the Final Act should be allowed to participate as observers without the right to take part in the decision-making process. That arrangement would provide an incentive for States to sign the Convention as early as possible.

The Preparatory Commission should also provide for the establishment and functioning of the Enterprise, and a specific reference to the Enterprise should be added in paragraph 1 of the draft resolution. Paragraph 6 was, rightly, vague about the question of subsidiary organs. His delegation did not believe that it was essential to have the Commission organized on the same lines as the Authority: there was no need, for example, for an executive organ. Paragraph 3, concerning the voting procedures of the Commission, was adequate to meet the concerns of those who believed that decisions should be taken by consensus.

His delegation held that the rules, regulations and procedures drafted by the Commission should be of a recommendatory nature only. Accordingly, the Conference would need to review the text of article 308 of the draft Convention.

Mr. CHARRY-SAMPER (Colombia) said that his delegation shared the views expressed at the preceding meeting on behalf of the Group of 77 by the representative of Peru. The report of the late President on the work of the informal plenary concerning the Preparatory Commission (A/CONF.62/L.55 and Corr.1) provided a good indication of the general agreement that was taking shape with regard to that issue. It was significant that there was virtually unanimous agreement regarding the establishment of the Preparatory Commission by means of a resolution of the Conference.

While there seemed to be no problem with regard to the Commission's performing the traditional functions of a preparatory commission, the Committee would have to consider in greater detail the specific functions arising out of the Convention. The experience of the United Nations demonstrated not only the usefulness of preparatory commissions but also the fact that a temporary body could reach agreements that would become permanent rules.

(Mr. Charry-Samper, Colombia)

As to the membership of the Commission, the general trend seemed to be to authorize States which had signed the Convention, and not only the Final Act, to participate in its work. The question of membership required careful thought, and members should bear in mind the situation that might arise if States signing the Convention participated in the work of the Commission but later failed to ratify the Convention. Through their participation in the Preparatory Commission such countries might secure specific concessions or advantages which would tie the hands of the Authority, of which they would thereafter not become members, and use them to maintain their lead in prospecting and mining of the sea-bed.

Such consideration had a direct bearing on the issue of the Commission's decision-making machinery. If the Commission was to adopt recommendations only, which seemed to be the generally accepted view, there was no need to insist on the requirement of consensus. Consensus as a method had its advantages and disadvantages, but there had to be some provision for taking necessary decisions. In the event of voting, rules of procedure similar to those of the Conference should be applied.

The provisions of the draft resolution with regard to the secretariat of the Preparatory Commission were sound. It was essential to avoid duplication, improvisation and unnecessary expenditure.

Mr. DE LA GUARDIA (Argentina) said that his delegation agreed fully with the statement made at the preceding meeting on behalf of the Group of 77 by the representative of Peru.

The fundamental concerns which should guide the Conference in its decision on the membership of the Preparatory Commission should be to ensure that the greatest possible number of States would sign the Convention and that the Convention should enter into force and the Authority be established at the earliest possible date.

The discussion at the preceding meeting showed that the overwhelming majority of States wanted the Convention. Accordingly, membership of the Preparatory Commission should be open to signatories of the Convention. The requirement that the Commission should take all decisions by consensus seemed to be at variance with the aim of making the Commission's work effective and expeditious. While the Commission's recommendations would be highly technical, and hence objective, which would facilitate their adoption by consensus, experience had shown that technical

(Mr. De La Guardia, Argentina)

considerations often had to yield to political expediency. While consensus might be the rule in principle, it should be complemented by some secondary procedure which would make it possible to take decisions in the event of failure to achieve consensus. Otherwise it might well become impossible for the Commission to act.

With regard to the suggestion made by the representative of the United Kingdom at the preceding meeting that the question of preliminary investment protection should be discussed in connexion with the functions of the Commission, it should be recalled that the Group of 77 had adopted a firm position on that matter in view of the repudiation by some circles of what had already been negotiated. It was not appropriate to deal with that matter in connexion with the Preparatory Commission.

A solution to the problem raised by a number of African States could take the form of a general agreement on specific commodities. If such an approach was adopted, the Commission's functions should include participation in the efforts to conclude such an agreement, which would, of course, be subject to approval by the Authority.

Miss MARTIN-SANÉ (France) said that the question of the Preparatory Commission had a bearing not only on the Final Clauses but also on the questions dealt with in Part XI of the draft Convention and the related annexes. Moreover, the debates on the Preparatory Commission would not be complete without a thorough discussion of the system of preliminary investment protection.

In her delegation's view, the Commission should be truly representative of all States which had participated in the Conference on the Law of the Sea. The membership should also be as stable as possible, since any changes might involve the continual consideration of questions that had already been dealt with, thus hindering the Commission's work and delaying the establishment of the Authority. Such situations could best be avoided by allowing all signatories of the Final Act to participate in the Commission even before they had decided to sign the Convention.

The Preparatory Commission should be established by a resolution adopted by the Conference when the Final Act was signed. In that resolution the Conference should submit to the General Assembly a draft resolution establishing the

(Miss Martin-Sané, France)

Commission, That procedure would enable the Commission to begin its work immediately after the signing of the Convention.

The decisions of the Commission should be made by consensus.

As for the rules, regulations and procedures drafted by the Preparatory Commission, her delegation felt that article 308, paragraph 4, of the draft Convention, as it stood, should apply, so as to enable those texts to be applied provisionally as soon as the Convention entered into force.

Mr. MÜLLER (Federal Republic of Germany) said that the main aim of the work of the Preparatory Commission was to enable the Authority to start its activities expeditiously and effectively and set in motion a system of exploitation and to establish the Law of the Sea Tribunal as quickly as possible after the entry into force of the Convention. One of the most important aspects of that task would be to provide for continued and uninterrupted development of sea-bed mining technology and thereby facilitate speedy development of the common heritage for the benefit of all mankind. The Preparatory Commission would accordingly have to deal with the protection of preparatory investments, without which the development of the common heritage might fail. It had been pointed out by several speakers that a timely build-up of the Enterprise was required for the same reasons. The draft resolution which had emerged from the discussion in the Informal Plenary provided a sound basis for future discussions.

In view of the importance of the work of the Preparatory Commission, it was vital to make provision for wide participation. He re-emphasized his delegation's view that signature of the Final Act of the Conference should be sufficient to qualify a State for membership of the Preparatory Commission. That would guarantee an early commencement of work and stability in the membership and activities of the Preparatory Commission. His delegation was eager to contribute to the work of the Commission from the start, which might not be possible if signature of the Convention - potentially a lengthy process under German law - was made a condition of membership.

Before making a decision on the voting procedure to be employed by the Preparatory Commission, the Committee should analyse the types of decision

(Mr. Müller, Federal Republic of Germany)

the Commission would have to make. The voting procedure might have to vary according to the subject-matter. She therefore believed that for the time being no change should be made to paragraph 3 of the draft resolution.

As envisaged in article 308 of the draft Convention, the rules, regulations and procedures drafted by the Commission should apply provisionally pending their formal adoption by the Authority. He could not agree to their having the status of mere recommendations; in his view, they should be considered an integral part of the whole exploitation régime to be agreed upon. Final judgement on that régime would inevitably depend on the substance and reliability of the Preparatory Commission's rules and regulations, and paragraph 9 of the draft resolution would have to reflect that approach.

In general, his delegation felt that the draft resolution on the Preparatory Commission constituted a sound basis for reaching agreement.

Mr. REVERDIN (Switzerland) said that the draft resolution (A/CONF.62/L.55, annex II) was an excellent basis for discussion on the establishment of the Preparatory Commission. He, like earlier speakers, believed that the question of the establishment of the Commission was closely linked to the protection of preliminary investments in the Area. Paragraph 3 of the draft resolution should be amplified by stating the decision-taking method to be employed in the Commission; his delegation's view was that decisions should be taken by consensus. He agreed that the Commission should make arrangements for convening the Law of the Sea Tribunal.

Paragraph 11 of the draft resolution was unclear as to the duration of the Preparatory Commission, but that was a point of detail which could be cleared up later. Similarly, the word "resolution" in paragraph 14 might give rise to some confusion. It should be understood as meaning an additional agreement among States participating in the Conference.

The Preparatory Commission should be able to establish subsidiary committees and organs, including an executive organ. In so far as such an executive organ was likely to be modelled on the Council of the Authority, it should be remembered that there was still some uncertainty about the composition of the Council. He welcomed the opportunity of discussing that and other controversial points related to Part XI.

Mr. BOS (Netherlands) said that he felt that the discussions at the ninth session of the Conference and the results of those discussions, as reflected in the draft resolution, provided a relevant and adequate basis for further discussions. A resolution of the Conference seemed an eminently acceptable instrument for laying down the rules of the Preparatory Commission. There was obviously a relationship between the Preparatory Commission and the protection of investments, but that was to be discussed at a later stage. He had some sympathy for the view expressed by the Group of 77 that the composition of the Preparatory Commission should not be an obstacle of the entry into force of the Convention. It would be useful to discuss a formula by which all countries could participate in the work of the Commission with a distinction being made, when it came to making decisions, between those which had signed the Convention and those which had signed only the Final Act.

The Preparatory Commission should play a role in preparing the necessary instruments on the functioning of the Enterprise, and the draft resolution should be adapted accordingly.

Mr. WOLF (Austria) said that there appeared to be unanimous agreement on the desirability of establishing the Preparatory Commission. However, the right of States to participate in the Commission was the subject of some dispute. The suggestion that membership in the Preparatory Commission should be limited to countries that had signed the Convention, while those which had signed only the Final Act were given only the status of observers, was motivated by the desire to give States an incentive to accelerate the process of ratifying the Convention. Well-meaning as it was, that idea could have another, undesirable effect: that of limiting membership of the Preparatory Commission. In his country, which was eager to contribute to a Convention which would lead to peaceful development of the oceans, the process of ratification might well be protracted, and that might well be true of many other countries. Given the desirability of the widest possible participation of States in the activities of the Commission, his delegation was prepared to advocate that all States participating in the Conference, whether or not they had signed the Final Act or the Convention, should be members of the Commission. He was sure that all delegations wanted to see the earliest possible ratification and entry into force of the Convention, the only differences being how

that goal was to be achieved. One possible compromise, which had already been suggested, was to set a time-limit for signing the Convention. That would give Governments time to make up their minds without being excluded from the work of the Preparatory Commission.

Mr. NAGOTA (India) said that when discussing the Preparatory Commission it was essential to remember what its purpose was. If it was assumed that the Preparatory Commission was to prepare the way for the establishment and proper functioning of the International Sea-Bed Authority and its organs, there should be no reservations about the need for its establishment, and the decision to establish it could be in the form of a resolution adopted by the Conference at the time of the adoption of the Convention. Participation in the Preparatory Commission should be open to those States which had indicated their intention to abide by the Convention, either by signing it or by taking other steps, such as ratification or accession. Those signing the Convention would be entitled to participate in the work of the Commission, including its decision-making, while those which had signed only the Final Act would have observer status. Without that distinction, the Commission would be simply a continuation of the Conference in another form, a situation which might create difficulties in its technical and preparatory work. The Commission should start its work within a specified period after 50 States had signed the Convention.

The Preparatory Commission should cease to exist on the establishment of the Assembly and the Council, unless the Assembly decided otherwise and gave it other specific functions. There should be no difficulty about making arrangements for its staffing, housekeeping functions and financing; it might be possible for it to be funded from the United Nations budget rather than by a loan. That, however, was a minor matter as long as the work of the Preparatory Commission was not unduly prolonged and its functions remained restricted. Its rules of procedure and decision-making process should likewise create no problems. Such standard functions of a preparatory commission as preparing draft rules of procedure, agendas, budget estimates, financial regulations and staff regulations should not prove difficult to agree upon.

(Mr. Nagota, India)

Careful consideration would, however, have to be given to whether the Preparatory Commission should draft rules, regulations and procedures for the exploitation of the sea-bed and, if so, what their status should be. He felt that the Preparatory Commission should not encroach upon the functions of the Legal and Technical Commission by drafting a comprehensive code, which would necessarily be a time-consuming activity. In other words, the Preparatory Commission should produce recommendatory or draft rules for formal adoption by the proper organs of the Authority; they should not be self-executory, even on a provisional basis. Accordingly, paragraph 4 of article 308 of the Convention would have to be modified.

The United States proposal about giving the Preparatory Commission powers of advance site designation pending the establishment of the Enterprise had several aspects which had not been taken into account in paragraph 8 of the draft resolution (A/CONF.62/L.55, annex II); the issue was to have been discussed at the current session. If the United States delegation wished to discuss this subject further, it should say so and elaborate on its earlier proposal. The Group of 77 might be induced to review its stand and state its position on the proposal in order to complete its recommendations on the Preparatory Commission. A decision on the question of whether the Preparatory Commission was to have a role in advance site designation might also influence the decision on whether the Commission should have an executive organ and, if so, what its decision-making procedures should be. Otherwise that question could be dealt with in the context of the Commission's rules of procedure.

In paragraph 4 (f) of the late President's report (A/CONF.62/L.55), reference was made to the possibility of amending paragraph 4 (d) of the draft resolution to include a reference to the financing of the Enterprise. In his delegation's view, the powers of the Preparatory Commission in respect of the Enterprise should be comprehensive and not restricted to financing. They should include the preparation of wide-ranging studies and recommendations regarding the establishment of the Enterprise and should be specifically provided for in the draft resolution, at least in general terms. Any specific aspects which required further consideration by the Committee might be discussed in the Working Group of 21 or in any other manner deemed appropriate.

Mr. NOVAKOVIĆ (Yugoslavia) said that his delegation held that membership of the Preparatory Commission should be limited to countries which had signed the Convention. That would impose greater responsibility on the members of the Commission since any later signatories would be bound by the rules which it had established. The Preparatory Commission should, however, grant observer status to other countries, and their participation would help them to decide whether they wished to sign the Convention. The Commission should be restricted to preparatory work and should not attempt to supplant the Authority itself, so that while it might make recommendations on rules, regulations and procedures, it should have no authority to implement them, even provisionally. His delegation supported the position of the Group of 77 on that subject.

Mr. CALINGAERT (United States of America) said that his delegation would co-operate fully in implementing the programme of work approved by the plenary. If further progress were to be made, a frank exchange of views was necessary, which could best be accomplished in informal consultations.

Mr. PASHKEVICH (Byelorussian Soviet Socialist Republic) said that the Preparatory Commission should adopt recommendations by consensus, and provisions to that effect should be included in the draft resolution (A/CONF.62/L.55, annex II). The Conference worked on the basis of consensus, and the Preparatory Commission should do nothing to jeopardize the agreement on substantive issues reached by the Conference. The purpose of the Commission would be to accelerate the practical work of the Authority, and that could more easily be achieved if it adopted recommendations by consensus. Moreover, the composition of the Commission would not, at least initially, be the same as that of the Conference, and working by consensus would ensure that the interests of all countries were taken into consideration. Finally, the Commission's role was technical, and it should not replace the Authority itself.

Mr. PINTO (Portugal) said that his delegation supported the general content of the draft resolution contained in document A/CONF.62/L.55, annex II.

The functions of the Preparatory Commission should extend to all organs established by the Convention, and not just to the International Sea-Bed Authority. Due account should be taken of the equality of States in determining the composition of the Commission.

Mr. DE SOTO (Peru) said that he disagreed with the observation, made at the previous meeting by the representative of the United Kingdom, that the question of investments made before the Convention came into force was closely linked with the question of the Preparatory Commission.

Mr. LUPINACCI (Uruguay) said that his delegation shared the views expressed by the Group of 77.

The proposals contained in document A/CONF.62/L.55, annex II provided a sound basis for consideration of the manner in which the Preparatory Commission should be established; it was particularly important that it should be established by means of a resolution of the Conference, since any other procedure would create difficulties. His delegation agreed that the Commission should not become a body resembling the Authority. It could, however, perform useful functions with respect to the arrangements for convening the Law of the Sea Tribunal.

With regard to the composition of the Commission, his delegation held that members should be required to demonstrate their interest by having signed or otherwise accepted the Convention. Signatories and non-signatories could hardly be treated on the same footing. In order to uphold the principle of universality, however, States which had signed the Final Act should be allowed to participate as observers.

He agreed that it would be preferable for the Commission to work on the basis of consensus. Other methods should be attempted only if consensus was impossible.

Mr. MEYS (Haiti) said that his delegation was convinced that only States which were parties to the Convention should be members of the Preparatory Commission. Signing the Final Act did not commit countries to the Convention, and countries not bound by the provisions of the Convention should be accorded, at most, observer status.

Mr. HAMOUD (Iraq) said that the draft resolution contained in document A/CONF.62/L.55, annex II, provided a sound basis for discussion.

Membership of the Preparatory Commission should be limited to those countries which had signed the Convention, provided that the Commission had a minimum of 50 members. Countries which had signed only the Final Act might be allowed to participate as observers.

(Mr. Hamoud, Iraq)

It was important for the Commission to confine itself to preparatory work and to making recommendations. The executive functions referred to in paragraph 4 of the draft resolution should be limited. Paragraphs 8 and 11 of the draft resolution created some difficulties for his delegation, as did the omission of any reference to the Enterprise.

Mr. JORIANO (Philippines) said that his delegation supported the position adopted by the Group of 77 on the Preparatory Commission. The Commission should be established by a resolution of the Conference, and its membership should be limited to those countries which had signed the Convention. That would encourage early ratification. Its decisions should be taken by consensus and should only have the force of recommendations.

Mr. SHARMA (Nepal) said that document A/CONF.62/L.55 offered a promising basis for discussion.

It was certainly necessary to establish the Preparatory Commission, which should be accomplished by means of a resolution of the Conference. However, there was no justification for limiting membership of the Commission to signatories of the Convention. Any country which had participated in the work of the First Committee would be in a position to discuss the technical issues which would arise in the Commission, and it would clearly be preferable for the Commission to have a broad membership. The presence of observers would be an anomaly.

Mr. EL-GHELLALI (Libyan Arab Jamahiriya) said that the stalemate engineered by a certain country should not be allowed to obstruct the work of the Conference. The international community should not submit to pressure from that country.

With regard to the Preparatory Commission, his delegation supported the position adopted by the Group of 77. It was important for the Commission to consider all the main organs to be established, including the Enterprise. That would ensure that the interest of the third world countries was maintained.

Mr. HAGE (Canada) asked whether the Chairman was yet in a position to inform the Committee exactly how the study prepared by the Secretariat as to the effects of the production limitation formula was to be used.

The CHAIRMAN replied that he was actively engaged in consultations on that and all other outstanding issues before the Committee.

Summing up the discussion on the Preparatory Commission, he said that the Committee agreed that establishment of the Preparatory Commission was desirable, that document A/CONF.62/L.55 should provide the basis for negotiations, and that unresolved issues should be pursued in informal consultations.

The meeting rose at 1.20 p.m.

UNITED NATIONS

THIRD CONFERENCE
ON THE LAW OF THE SEA

PROVISIONAL

A/CONF.62/C.1/SR.52
9 April 1981

ORIGINAL: ENGLISH

Tenth session

FIRST COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE 52nd MEETING

Held at Headquarters, New York,
on Friday, 3 April 1981, at 10.30 a.m.

Chairman: Mr. ENGO (United Republic of Cameroon)

CONTENTS

Reports of the Secretary-General:

(a) Effects of the production limitation formula under certain specified assumptions

(b) Potential financial implications for States Parties to the future Convention on the Law of the Sea

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The meeting was called to order at 10.45 a.m.

REPORTS OF THE SECRETARY-GENERAL:

(a) EFFECTS OF THE PRODUCTION LIMITATION FORMULA UNDER CERTAIN SPECIFIED ASSUMPTIONS (A/CONF.62/L.66)

(b) POTENTIAL FINANCIAL IMPLICATIONS FOR STATES PARTIES TO THE FUTURE CONVENTION ON THE LAW OF THE SEA (A/CONF.62/L.65)

Mr. ZULETA (Special Representative of the Secretary-General) introduced the report on potential financial implications for States parties to the future convention on the law of the sea (A/CONF.62/L.65). The report was based on assumptions which were obviously subject to revision. The estimates of expenditure were based on the relevant experience of the United Nations and other bodies of the United Nations system and were still open to modification in the light of further consultations and verifications. In the case of administrative and substantive units of the secretariat of the Authority and the Enterprise, the Secretariat had based its assumptions on the documents listed in paragraph 2 of the report. In making the estimates for the permanent facilities of the Authority and the Enterprise, in particular the headquarters of both the architectural units of the United Nations and its specialized agencies had been consulted; delegations would note that in many cases high, medium and low assumptions had been presented for capital investments and recurring costs. Personnel expenditure had been based on conditions prevailing within the United Nations system. Construction costs in different cities had been taken into account; the city in which personnel expenditure would in theory be lowest did not necessarily offer the lowest construction costs. The estimates relating to the Preparatory Commission included such conference services as interpretation, translation and documentation, but not substantive services.

(Mr. Zuleta)

At its 141st meeting the Conference had requested him to conduct a detailed study analysing the effects of a ceiling-flow-safeguard formula set out in article 151, paragraph 2 (b), contained in the report of the Co-ordinators of the Working Group of 21 (A/CONF.62/C.1/L.28/Add.1). The formula in question was embodied in the draft Convention on the Law of the Sea (Informal Text) (A/CONF.62/WP.10/Rev.3). The Conference had also given instructions with regard to the parameters and methods to be used for the study. The results of the study were before the Committee in document A/CONF.62/L.66. For the purposes of economy in presentation, all figures had been rounded off to one place of decimals. In the Secretariat's view, that did not substantially distort the projections, but if delegations thought that the distortion might be significant, the Secretariat would be happy to produce more detailed figures. The Secretariat had made no value judgements on the figures resulting from applying the formula set out in article 151, paragraph 2 (b); the opinions in the report were statements of fact relating to the trend lines and assumptions appearing in the report, and nothing in the document should be construed as an opinion for or against a given approach. The Secretariat would be happy to answer questions on the criteria used for the preparation of the study.

Mr. PASHO (Canada) said that, in accordance with the directive of the Conference, the Secretary-General's report on the effects of the production limitation formula under certain specified assumptions (A/CONF.62/L.66) was primarily a numerical study which illustrated the effects that the assumptions specified in the directive would have when applied to the production limitation formula. The report was most useful in that it provided for the first time an independent and impartial set of calculations that could be used by all delegations to examine the most recent production limitation formula. It clearly demonstrated how that formula, with such additions as floor and safeguards, should be calculated. His delegation was in complete agreement with the report and commended the Secretariat for developing a constructive basis for further work.

His delegation's analysis of the numerical results of the report showed, first, that for all cases evaluated in the report, sea-bed nickel production could take up from 15 per cent to 21 per cent of existing world demand for nickel during the

(Mr. Pasho, Canada)

first year of commercial sea-bed production; secondly, that for cases illustrating higher growth rates where the ceiling operated, allowable sea-bed production would be less than presumed new market growth during the latter part of the interim period, and, thirdly, that for all low-growth cases evaluated in the report where the "safeguard" operated, allowable sea-bed production exceeded presumed new market growth.

Since paragraph 2 of the report stated that the purpose of the report was to provide a clearer basis for evaluation, his delegation suggested that consideration should be given to establishing a group of experts for that purpose. An earlier group of technical experts had been most helpful in that it had produced an agreed nickel data-base and a methodology that had subsequently been used to calculate the ceiling that had been incorporated in the ICNT and its subsequent revisions. A similar group of technical experts could utilize the report of the Secretary-General as the basis for an evaluation of the production limitation formula.

Mr. MWANANG'ONZE (Zambia) said that while the report (A/CONF.62/L.66) attempted to give a numerical explanation of the application of the production control formula contained in article 151, paragraph 2 (b), of the draft Convention, it did not include the effects that sea-bed mining would have on existing and future land-based nickel, copper, cobalt and manganese industries. His delegation was aware, however, that thorough research into the effects of sea-bed mining on land-based mining would require a dynamic forecasting model incorporating several variable parameters instead of a quasi-static model utilizing only one independent variable, and it realized that the latter had been selected because of its simplicity, notwithstanding the severe limitations on its application to real-life situations.

With regard to paragraph 3 of the report, he observed that in an exponential trend line the time factors to which the growth rate was applied were just as important as the base amount. He believed that to be the case because the exponential trend line, being an exponential function, had two important parametric components which would affect, for a given growth rate calculated from the data for the relevant 15-year period, the production ceiling to be computed for any year for which production authorization was sought. In his view, therefore, the last sentence

(Mr. Mwanang'Onze, Zambia)

of paragraph 3 of the report should have made reference not only to the base amount but also to the time to which the growth rate was applied.

With regard to paragraph 4, his delegation did not believe that the fact that the production control formula under discussion was a reliable device for determining the behaviour of a metal market meant that it should be rejected in its entirety. Its crude nature and inadequacy served to emphasize the urgent need to improve upon it in order that sea-bed mining could start within a reasonable period and in a manner which provided adequate protection for land-based producers.

His delegation agreed with the statement in paragraph 5 that one erratic annual nickel consumption figure could affect the growth rate and the base amount in a trend line derived from the 15-year data. However, it had two reasons for rejecting the contention that projecting the trend line so derived for a period of seven years ahead could have an even more pronounced effect. The first reason was that, having determined the growth rate and the base amount from the historical data, the historical data were rejected; the second was that all values derived from the trend line in question lay, as a matter of fact, on that trend line, including the values projected seven years ahead using the trend line. The use of trendline analysis over a particular period of time - 22 years in the case under discussion - had a smoothening effect over that period, a phenomenon which was contrary to reality. Shifting of the data base to another time interval in the consumption time plane recognized that fact. The notion that trend line values projected for a period of seven years ahead could suffer violent fluctuations with zero correlation coefficient was entirely wrong. The projected values, together with trend line values corresponding to the 15-year period, gave perfect correlation as a consequence of the assumption made.

It was not at all true that the fluctuations gave rise to a reduction in the production ceiling in successive years: the reduction was actually due to the decreasing timed element within the production formula when computing values on the original trend line for the year prior to the year of the earliest commercial production. What happened was that, because the time-distance between the year immediately prior to the commencement of the interim period and the year for which the production ceiling was calculated was larger than that between the year preceding the year of the earliest commercial production and the year for which the

(Mr. Mwanang'Onze, Zambia)

production ceiling was calculated, the timed element in the former case attained a negative value five years before the timed element in the latter case passed through zero to negative. The base amount was influenced by the date in the 15-year period and the position occupied by that 15-year period on the time axis.

The omission from the report of a section giving a theoretical background to the computation of the statistical data presented in it seriously affected the acceptability of the report. Even a summary of the theory would have removed doubts about the authenticity of the data. An explanation of such salient features as trend lines used to obtain the substitute data and trend lines derived from the analysis of historical and substitute data, or at least a general statement of a trend line equation in algebraic form, would have made cross-checking much easier.

His delegation accepted the substitute data for world consumption of nickel presented in Annex II, table 2. The difference between the substitute data in the report and that in his delegation's possession ranged from 200 to 600 tonnes and arose from the 200-tonne difference in the trend line value for 1979. However, he had found the annual rates of increase of the original trend lines (annex II, table 4) to be incorrect for the following periods: 1964-1978, 1975-1989, 1976-1990, 1977-1991, 1978-1992 and 1979-1993. Even if the rates given in column (4) and the corresponding amounts in column (5) were assumed to be correct, the results given in columns (6), (7) and (8) would be wrong because they did not satisfy the necessary conditions, which, incidentally, were nowhere stated in the report. He had discussed those points with the Secretariat, and some of his observations had been acknowledged to be correct.

It was of the utmost importance, in his delegation's view, to bear in mind that what was before the Conference was a draft Convention, not a final, non-negotiable text. On the other hand, to try to improve part of a single article was not tantamount to reopening the entire Convention or even the whole of that article. It was likewise wrong to regard the nickel-based formula as having the status of a negotiated compromise. For that reason, his delegation had circulated informally to delegations a formula based on cobalt as a control, and it was worth noting that that formula gave relatively lower tonnages of metals produced from sea-bed mining.

(Mr. Mwanang'Onze, Zambia)

What his delegation was seeking was a method of protecting land-based producers without, however, creating for them a monopoly on their part of the market or striving to block sea-bed mining for the foreseeable future. His delegation would accordingly be prepared to participate in one further study with a view to producing a formula that would be responsive to the interests of all countries, and it therefore supported the proposal made by the representative of Canada on the establishment of a small group of experts, on the understanding that the work of the group of experts was not used as a pretext for further postponing the Conference's decision on the issue.

Mr. BRENNAN (Australia) supported the Canadian representative's suggestion. The Secretary-General's report provided only one illustration of the effect of the formula in one case of low growth, that in which a growth rate of 2 per cent was assumed. He suggested that the Secretariat should be asked to provide additional sets of figures based on assumed growth rates of 2.3 per cent and 2.7 per cent.

Mr. DE SOTO (Peru) said that it was clear that some delegations were in a better position to grasp the significance of the study than others. His delegation regarded the text which the Conference had produced to date as a negotiating, rather than definitively negotiated, text, and therefore did not rule out the possibility of improving on the content of any article. On the other hand, he felt that the Canadian proposal should be taken up at the following session of the Conference. Separate negotiations were already taking place on a great many subjects, and the smaller delegations could not spare the staff to cover all the different meetings going on at once.

Mr. MANANSALA (Philippines) said that he had expected the study, which his delegation had requested at the previous session to provide clear, impartial and simple analysis of the effects of the formula. Having seen the Secretary-General's report, however, he was more confused than ever. He supported the Canadian suggestion to set up a small study group, in the hope that it would afford a clearer insight into the implications of the document.

Mr. YARMOLOUK (Union of Soviet Socialist Republics) said that he found document A/CONF.62/L.66 very useful in that it could help to resolve the different interpretations placed by delegations on article 151 of the informal text of the Convention. His delegation generally found the report objective and convincing. On the Canadian proposal, however, he was inclined to agree with the Peruvian representative.

Mr. KALONJI TSHIKWALA KAKWAKA (Zaire) commended the Canadian proposal. The basic defect of the study prepared by the Secretariat was that it was based on a single metal. Had other metals been considered, very different results might have emerged. As they stood, however, the projections suggested that the consequences for existing land-based producers could be catastrophic. He felt that the proposed expert group should be set up as soon as possible.

Mr. MAQUIEIRA (Chile) said that he would prefer to take note of the Canadian proposal, but delay action on it until the following session.

Mr. WOOD (United Kingdom) said that he found the study both clear and accurate. The fact that he would refrain from touching on the substance of the question should not be taken to imply that he agreed with what other delegations had said on the matter; in some cases he definitely did not. On the matter of the expert group proposed by Canada, he shared the view of the Peruvian representative.

Mr. DEL CORRAL (Colombia) said that production limitation formulas had been under discussion in the Conference for years. There was no justification for setting up a group simply to improve the presentation of a set of data: the Secretariat could do the job far more rapidly; and in any case, no formula, however sophisticated, could predict all the effects of a measure such as production limitation. His delegation was, of course, willing to confer informally on the matter with other members of the Conference.

Mr. PRÉVAL PÁEZ (Cuba) said that the following session would be time enough to set up a small group, since many delegations would require more time to study the report. The Secretary-General's report was very useful in that it presented one way of applying the production limitation formula and might thus discourage all delegations from making their own individual interpretations.

Mr. EL GHOUAYEL (Tunisia) said that he had been taken aback by the Canadian proposal. The matter of article 151 was undoubtedly important, but few delegations could command the expertise in New York to assess the value of the Secretary-General's report at the moment. He believed that the question should be discussed in the time-honoured way, in restricted and informal negotiations.

Mr. MWANANG'ONZE (Zambia) said that the situation had been misrepresented by some delegations. The paper to which he had referred in his earlier statement set out a number of conditions for establishing whether the figures in columns 6, 7 and 8 of table 4 in annex II of the Secretary-General's report were consistent with those in columns 3, 4 and 5. The discrepancies between his delegation's figures and those in the Secretary-General's report were due to the fact that his delegation had used figures to five places of decimals for the trend line whereas the Secretariat paper used figures correct to only one place of decimals, making the results a great deal more approximate. It remained true that the formula did not protect existing producers of copper, nickel and cobalt.

It seemed that most delegations wished discussions of the matter to continue; in that case, there would have to be a time-limit if the discussions were not to degenerate into a mere exchange of arguments, the effect of which might be to jeopardize agreement on article 151. He had no intention of engaging in delaying tactics, but it would be wrong to mark time on the question until delegations were faced with a fait accompli. To reject the Canadian proposal out of hand might well defeat the efforts of the Conference to reach an acceptable compromise.

Miss MARTIN-SANÉ (France) said that while it might not be possible to verify all the figures contained in the report of the Secretary-General, they did appear to be correct, and her delegation saw no need for the moment to establish a group of experts. There were already too many technical studies on the matter, and her delegation believed that any further study should be postponed until the following session.

Mr. NOLARD (Belgium) said that the figures contained in the report on potential financial implications of the future convention for States Parties (A/CONF.62/L.65) seemed to indicate that with an average annual growth rate of 3 per cent, sea-bed mining production from five sites would increase production

(Mr. Nolard, Belgium)

from a maximum of 14 mining sites 20 years later. That pattern of development worried his delegation inasmuch as it would mean that the cost of establishing the new organs would be far larger than income from sea-bed mining operations. As a result of recent developments, the Conference had time available to study the matter carefully and strike a balance between outlay and income. In other words, it was an opportune moment to determine whether the results of negotiations thus far were in keeping with what had been intended in 1970.

With regard to document A/CONF.62/L.66, his delegation understood the position of land-based producers, especially developing countries, and ways would have to be found to limit the impact of sea-bed mining on their economies.

Mr. NYAMWAYA MUDHO (Kenya) said that his delegation believed that the Conference had reached its concluding stage, and he was therefore dismayed by the trend of the discussion. While he understood the difficulties which some delegations had with the proposed production limitation formula, he found it inconceivable that some should wish to postpone discussion of the matter until a later session. If an expert group was needed, there was sufficient time for it to be established and complete its work before the end of the current session. Otherwise, it might work throughout the intersessional period so that the eleventh session, which had come to seem inevitable, would be the final one.

Mr. GIORGOLO (Italy) said that the report of the Secretary-General on the effects of the production limitation formula confirmed the calculations carried out by his delegation. If it was deemed necessary to establish a group of experts, his delegation would like to be a member. However, it appeared that delegations needed a good deal of time to study the report thoroughly before establishing such a group.

Mr. CHINHENGO (Zimbabwe) said that the problem created by article 151 of the draft Convention could be solved only by experts, and he believed that such a group should be established immediately. He agreed with the representative of Kenya that there was time for the group to work out an alternative formula before the end of the session. The group should also be instructed to study the effects of any proposed formula on land-based producers. His delegation was opposed to any

(Mr. Chinhengo, Zimbabwe)

further informal consultations, given the poor results of the consultations organized at the ninth session.

Mr. CALINGAERT (United States of America) said that document A/CONF.62/L.66 was a useful explanation of a very complex issue. His delegation shared the view of those who believed that it was neither appropriate nor necessary for the time being to establish a group of experts. If the proposal was raised again at the following session, his delegation would study it carefully.

Mr. LUCAS (Federal Republic of Germany) said that both reports under consideration were comprehensive and deserved further careful study by Governments. The reports demonstrated that what was being established was a very expensive system which might be too costly considering the limited number of sites that would be mined. In other words, the relationship between the financial implications and production control should be borne in mind. With regard to the proposed group of experts, his delegation supported the position taken by Peru that there had been many technical working groups on limitation and there was no immediate need for a further study. The matter should be put off until the following session.

Mr. MPEGA (Gabon) said that the representative of Zambia had clearly demonstrated the negative effects of the proposed production limitation formula on land-based producers. If that formula were to be adopted, Gabon would lose 30 per cent to 40 per cent of its income from manganese, a development that would run counter to article 151 of the draft Convention, which stated that activities in the Area should be carried out with a view to ensuring the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or on the volume of that mineral exported, to the extent that such reductions were caused by activities in the Area. An attempt should be made to find a formula that was acceptable to all countries, and his delegation therefore supported the proposal that a group of experts should be established immediately. That would not impede the work of the Conference but would save time at the following session.

Mr. BENNOUNA (Morocco) said that his delegation had always been willing to negotiate in good faith in order to secure universal agreement on a global package for the law of the sea. It was therefore inclined to be cautious about any proposal that might delay a satisfactory conclusion to the Conference. Statistics always had to be studied carefully because they could be manipulated to produce any result desired. It was for that reason that his delegation deplored any attempt to establish a relationship between the cost of the Authority and the income from mining sites, because the Authority was not intended to exist for only 20 years, but for centuries.

His delegation did not understand what type of mandate would be given to the proposed group of experts and would like an explanation before it took a position on the matter. The report of the Secretary-General was itself based on hypotheses, and he wondered whether the group of experts would analyse the basis for the calculations it contained or the calculations themselves. He hoped that the required explanations would be submitted in the form of a document so that delegations could study them.

Mr. ZULETA (Special Representative of the Secretary-General) said, with reference to comments made by the representative of Zambia, that the report on the production limitation formula (A/CONF.62/L.66) had excluded assumptions of interest to a particular group of countries because the Conference had desired that the number of assumptions used should be limited. If the Conference has wanted the study to cover other minerals such as manganese, cobalt and copper, it should have given the Secretariat instructions to use broader parameters, such as supply trends and market structures. Several studies had been made on those subjects by the United Nations Conference on Trade and Development and were available to delegations. The Secretariat had been aware that there was more than one way to make the mathematical calculations, but it had felt that it was preferable to use a method that had already been used in the Conference. As he had stated earlier, there were some small variations as a result of rounding off the figures of annual growth rates. If figures correct to five decimal places had been used, those variations would not have occurred. At any rate, if it was so decided, the Secretariat could provide the more detailed figures for annual growth rates.

In preparing the report, the Secretariat had confined itself to drawing attention to certain phenomena resulting from the assumptions used and had not attempted to draw any conclusions from them. As the representative of Australia had said, the Secretariat had not used any hypothetical growth rates in excess of 2 per cent because it had had no mandate to do so. If the Committee felt that that should be done, the Secretariat could issue an addendum to the report reflecting growth rates between 2 and 3 per cent - for example, 2.3 and 2.7 per cent. Two comments had been made in the debate which clearly demonstrated the difficulties encountered in preparing the report: one representative had stated that the report was too complex and should be studied by an expert group, while another had stated that it was not precise enough. The Secretariat had attempted to take the middle course with a view to producing a document that delegations would not find too technical.

Mr. MWANANG'ONZE (Zambia), supported by Mr. CHINHENGO (Zimbabwe), said that an addendum of the kind proposed would be too limited and would be merely another attempt to avoid facing the problem. His delegation would agree to the issue of such an addendum, however, provided that it was also decided to establish a group of experts to study the report.

The CHAIRMAN said that there was no consensus with respect to the establishment of a group of experts and he therefore suggested that he should be authorized to hold informal consultations with a view to reaching consensus on how to proceed.

Mr. GIORGOLO (Italy) said that his delegation had made calculations based on a growth rate of 2.5 per cent and would provide the figures to the Secretariat so that they could be made available to interested delegations.

The CHAIRMAN said that any delegation that wished to make calculations with respect to the growth rate of nickel consumption could do so and circulate them informally, since there seemed to be no agreement on the issuing of an addendum to the report.

The meeting rose at 1.05 p.m.